

REMARKS

By way of this Response, new claims 53-56 are added. As a result, claims 33-48 and 53-56 are pending in this patent application. Favorable reconsideration of the application and allowance of all of the pending claims are respectfully requested in view of the following remarks.

Applicants have received numerous Office Actions from the U.S. Patent & Trademark Office for this patent application. In particular, the Office Actions received for this application are set forth below.

8/30/04 – Non-Final Office Action
10/6/05 – Non-Final Office Action
4/17/06 – Non-Final Office Action
9/15/06 – Final Office Action (finality withdrawn)
3/5/07 – Final Office Action
6/5/07 - RCE filed
6/29/07 – Non-Final Office Action
12/5/07 – Non-Final Office Action
7/2/08 – Non-Final Office Action
1/6/09 – Non-Final Office Action

Applicants respectfully note that the current Non-Final Office Action mailed January 6, 2009 is the **fourth** Non-Final Office Action received for this patent application since the RCE was filed on June 5, 2007. **The MPEP explains that the shortest path to the final disposition of an application is by finding the best references on the first search and carefully applying them. See MPEP § 707.02. The MPEP further expects that a Supervisory Patent Examiner (SPE) personally check on the pendency of every application which is up for the third or subsequent Office action with a view to finally concluding its prosecution. Consequently, we request that a SPE personally review this case with an eye towards concluding its prosecution.**

In the Office Action, claims 33-35 and 43 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,245,130 to Wheaton (*Wheaton*). In addition, the Office Action stated that “Applicant needs to distinguish over the prior art with structural limitations.”

Regarding independent claim 33, Applicants respectfully submit that *Wheaton* fails to teach or suggest at least: “a breath sensor, the breath sensor being coupled to the body at a first location, the breath sensor being configured to detect the presence of breath proximate to the first location by detecting the value of one of humidity and temperature proximate to the body, the breath sensor being configured to generate an electrical characteristic relative to the value detected by the breath sensor” as recited in claim 33. (*emphasis added*) In addition, *Wheaton* fails to teach or suggest at least: “a reference sensor, the reference sensor being coupled to the body at a second location, the second location being spaced apart from the first location, the reference sensor in the second location being protected from any breath to which the breath sensor at the first location is exposed, the reference sensor being configured to detect the value of one of humidity and temperature proximate to the body and to generate its own electrical characteristic relative to the value detected by the reference sensor” as recited in claim 33. (*emphasis added*)

Wheaton discusses the detection of air flow using air flow sensors 56, 57, 59, and 66. The air flow sensors can detect the magnitude of the air flow with the direction of air flow being determined by determining the sensor which detects the greatest amount of air flow. As set forth in *Wheaton*, “two air flow sensors 56 and 66 are provided for each passageway 16. The air flow sensors 56 are mounted on the bottom portion of the top air flow plate 54 so as to sense air flow through the passage therebelow through passageways 16.” (col. 6, lns. 62-67). In addition, *Wheaton* discloses that “the sensors 56, 66 are preferably directionally sensitive and detect only air flow in the direction of the arrow which, in this instance, corresponds to a blowing action of the performer.” (col. 7, lns. 9-13) Moreover, *Wheaton* discloses that “first and second solid state air flow sensors 57, 59, respectively, are provided in each air flow passageway 16.” (col. 8, lns. 16-18) Thus, in *Wheaton*, the air flow sensors in each pair are mounted in the same air flow passageway and are exposed to the same flow of air. Accordingly, *Wheaton* does not disclose a “reference sensor in the second location being protected from any breath to which the breath sensor at the first location is exposed” as recited in claim 33. In addition, *Wheaton* fails to teach

or suggest a sensor that detects the value of one of humidity and temperature, as recited in claim 33.

The Office Action states that *Wheaton* discloses that “the sensor 59 is fully capable of performing the function of detecting the value of humidity and generating an electrical characteristic.” Applicants respectfully disagree with that interpretation of *Wheaton*. Applicants request that the Examiner provide the basis for such an assertion in view of the disclosure of *Wheaton*, which is directed to the sensing of air flow. There is no discussion in *Wheaton* relating to the detecting of either humidity or temperature.

Applicants also submit that independent claim 33 recites structural limitations that distinguish over the prior art. As an example, claim 33 recites “the reference sensor in the second location being protected from any breath to which the breath sensor at the first location is exposed,” which is a structural limitation. There are other structural limitations present in claim 33. For at least the foregoing reasons, Applicants submit that independent claim 33 is allowable. Applicants further submit that each of the dependent claims 34 and 35 is allowable for its dependency from claim 33 and for the additional features that it recites.

Regarding independent claim 43, Applicants respectfully submit that *Wheaton* fails to teach or suggest at least: “a second sensor, the second sensor being positioned at a second location on the toy, the second location being spaced apart from the first location, the second sensor being located so that it is protected from air exposure, the second sensor being configured to generate an electrical characteristic in response to the detection of ambient conditions proximate to the second sensor, the second sensor being positioned to be exposed to different ambient conditions than the first sensor” as recited in claim 43. (*emphasis added*)

In addition, Applicants respectfully submit that independent claim 43 recites structural limitations that distinguish over the prior art. For at least the foregoing reasons, Applicants submit that independent claim 43 is allowable over *Wheaton*.

Claims 33-41 and 43-48 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Appl. Pub. No. US 2001/0041496 to Smirnov (*Smirnov*) in view of *Wheaton*. Applicants continue to repeat their remarks with respect to *Smirnov* from prior Responses for this

patent application. The Office Action states that “*Smirnov* does not disclose a sensor arrangement having one sensor in a first location and a second sensor in a second location.” Applicants assert that *Smirnov* fails to teach or suggest other claim limitations in the pending claims as well. Consistent with the Remarks in the most recently filed Response, Applicants continue to disagree with the assertion in the Office Action that *Smirnov* discloses “a reference sensor (paragraph 0077, lines 3-5, providing a corresponding sensor connected to a processor; since the corresponding sensor is connected to a processor [which stores digital values] it is inherently capable of detecting an ambient value); the reference sensor inherently has an electrical characteristic in order to operate in conjunction with the processor.”

Referring to paragraph 0077 of *Smirnov*, the paragraph actually recites: “Furthermore, not only temperature can be used as a characteristic of environment but atmospheric pressure, humidity, illumination, level of acoustic noise, etc. To detect these environment characteristics, it is necessary to install corresponding sensors, connect them to controller 21 and process this data in the program of selecting a message for reproduction.” It is unclear how the Examiner is interpreting that disclosure of *Smirnov* as teaching or suggesting a reference sensor as stated in the Office Action and as recited in the claims. Applicants request that the Examiner provide a proper basis for the allegation in the Office Action that *Smirnov* discloses a reference sensor. In addition, Applicants respectfully submit that *Smirnov* fails to remedy the deficiencies of *Wheaton* that were described above.

Regarding independent claim 33, Applicants submit that *Smirnov* fails to teach or suggest at least a breath sensor and a reference sensor as recited. Applicants submit that, for at least the reasons set forth above, *Wheaton* fails to remedy the deficiencies of *Smirnov* with respect to independent claim 33. Accordingly, Applicants submit that claim 33 is allowable that that each of the dependent claims 34-41 is allowable for its dependency from claim 33 and for the additional features that it recites.

Regarding independent claim 43, Applicants submit that *Smirnov* fails to teach or suggest at least a first sensor and a second sensor as recited. Applicants submit that, for at least the reasons set forth above, *Wheaton* fails to remedy the deficiencies of *Smirnov* with respect to

independent claim 43. Accordingly, Applicants submit that claim 43 is allowable and that each of the dependent claims 44-48 is allowable for its dependency from claim 43 and for the additional features that it recites.

For at least the foregoing reasons, Applicants submit that *Wheaton* and *Smirnov*, taken alone or in proper combination, fail to teach or suggest the invention as recited in claims 33-41 and 43-48.

Claim 42 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claim 33 above, and further in view of U.S. Patent No. 3,721,039 to Cook et al. (*Cook*). Applicants respectfully submit that *Cook* fails to remedy the deficiencies of *Wheaton* and *Smirnov* with respect to independent claim 33. Accordingly, Applicants request that the rejection of claim 42 in view of *Cook* be withdrawn.

By way of this Response, Applicants have added new claims 53-56. Applicants submit that none of *Wheaton*, *Smirnov*, and *Cook* teaches or suggests the invention as recited in new independent claim 53. Additionally, each of the new dependent claims 54-56 is allowable for its dependency from claim 53 and for the additional features that it recites.

For at least the foregoing reasons, Applicants respectfully submit that pending claims 33-48 and 53-56 are allowable. In addition, if for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is respectfully requested to call the undersigned to discuss any unresolved issues and to expedite the disposition of the application.

Applicants hereby petition for any extension of time that may be required to maintain the pendency of this case, and any required fee for such extension is to be charged to Deposit Account No. 05-0460.

Respectfully submitted,

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